

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NICOLE JENNINGS WADE,
JONATHAN D. GRUNBERG, and
G. TAYLOR WILSON,

Plaintiffs,

v.

L. LIN WOOD,

Defendant.

Case No. 1:22-CV-01073

**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION TO TAKE
DEPOSITION OF DEFENDANT OUTSIDE OF DISCOVERY PERIOD**

Plaintiffs file this Brief in Support of Their Motion to Take Deposition of Defendant Outside of the Discovery Period, showing the Court as follows:

BACKGROUND

On August 17, 2022, this Court in a status hearing entered an Order setting the end of discovery as December 16, 2022. Plaintiffs Wade, Grunberg, and Wilson sat for their depositions respectively on November 1, 2, and 3rd. Defendant was originally scheduled to sit for his deposition on November 8, 2022 but was rescheduled to December 14, 2022, due to Plaintiffs' lead counsel's contracting Covid. (*See* Plaintiff's Notice of Defendant's deposition, Doc. 54). On December 12, 2022, counsel for Defendant Wood informed Plaintiffs' counsel that his

deposition scheduled for December 14th would need to be rescheduled again due to Defendant Wood's recent illness. Plaintiff now requires this Court's authority to take the deposition of Defendant Wood outside the discovery period. Counsel for Defendant has stated his client's consent to taking this deposition out of the discovery period as it had been properly noticed twice but continued due to factors outside of the parties' control.

ARGUMENT AND CITATION OF AUTHORITY

The standard for the Court's modification of discovery in the Northern District is clear: "To establish good cause, the party seeking the extension must establish that the schedule could not be met despite the party's diligence." See *Ashmore v. Sec'y, Dep't of Transp.*, 503 Fed. Appx. at 685; see also *Romero v. Drummond Co.*, 552 F.3d 1303, 1319 (11th Cir. 2008) ("To establish good cause, the party seeking the extension must have been diligent."). *Williams v. Blue Cross & Blue Shield of Fla., Inc.*, 2010 WL 3419720, at *1 (N.D. Fla. Aug. 26, 2010) (citing *S. Grouts & Mortars, Inc. v. 3M Co.*, 575 F.3d 1235 (11th Cir. 2009)); see also Charles A. Wright et al., 6A Federal Practice and Procedure § 1522.1, at 231 (a party seeking to reopen discovery must show why court's deadlines could not "reasonably" have been met "despite [its] diligence").

Plaintiffs meet all of the criteria set forth above for allowing an out of time discovery deposition of Defendant. Plaintiffs' have diligently pursued the deposition of Defendant, as well as all other discovery. The deposition of Defendant Wood has been set and noticed twice but postponed only for good cause. The Court's deadlines could not reasonably have been met given the unforeseen illness of Plaintiff's counsel and Defendant himself. Finally, Plaintiffs could not have anticipated that Defendant would cancel his noticed deposition less than 48 hours before it was set to occur, said date itself 48 hours short of the deadline for discovery. Simple equity demands that Plaintiffs be allowed to take the deposition of Defendant out of time.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court grant Plaintiffs' Defendant's Motion to Take Deposition of Defendant Outside of Discovery Period.

Respectfully submitted, this 16th day of December, 2022.

/s/ Andrew M. Beal

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CERTIFICATION UNDER L.R. 7.1D.

Pursuant to Northern District of Georgia Civil Local Rule 7.1D, the undersigned counsel certifies that this PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION TO TAKE DEPOSITION OF DEFENDANT OUTSIDE OF DISCOVERY PERIOD is a computer document and was prepared in Times New Roman 14-point font, as mandated in Local Rule 5.1C.

This 16th day of December, 2022.

/s/ Andrew M. Beal

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

Respectfully submitted, this the 16th day of December, 2022.

/s/ Andrew M. Beal

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